IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2724 OF 2006

Subhash Madhav Kulkarni ... Applicant
versus
State of Maharashtra & anr. ... Respondents

Mr.Vishwajit Sawant with Subhash Jadhav i/by ALMT Legal for applicant.

Mr.R.Y.Mirza, APP.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th August 2006

PC :

1. Heard Shri Sawant for the applicant and Shri Mirza - APP for the respondents. Perused the application and the annexures thereto so also the further affidavit filed in this Court on 17th August 2006. There are annexures to this affidavit as well.

2. It is not disputed before me that CR No.17 of 2006 registered on 8th January 2006 with Deccan Police Station alleged offences, inter alia, of cheating and forgery against not only the applicant but members of Bidkar Family. There

are officers of the Pune Municipal Corporation who are arrayed as accused as well.

3. Insofar as subject C.R. is concerned, one company M/s.Blue Heaven Estate Pvt.Ltd. has filed Special Civil Suit No.509 of 1983 against the Pune Municipal Corporation, Bidkars and the applicants herein. The said suit is pending. The criminal case is filed by the plaintiff in this suit alleging offences as noted above. It pertain to Survey No.240-K in respect of which Transferable Development Rights (TDR) has been generated. The TDR is generated because the land was reserved in the development plan for D.P.Road. It was surrendered by Bidkars and in lieu of said surrender they were to get TDR rights. The dispute is with respect to this TDR because the plaintiff/complainant alleges that it is entitled to it, whereas, the applicant herein has on the strength of the Power of Attorney executed by Bidkars in his favour completed the transaction with regard to this TDR..

4. It is also not disputed before me that Bidkars who are arrayed as accused in the subject C.R. have been released on anticipatory bail by the learned Sessions Judge.

5. In the case of the applicant as well he was initially granted interim protection in February 2006 but the same has not been continued and his application is dismissed.

6. Shri V.P.Sawant appearing for the applicant has invited my attention to the fact that when the Bidkars who are arrayed as accused in the identical circumstances and in the same CR, have been released on bail apprehending their arrest, different treatment could not have been meted out to the applicant. The allegations in the plaint and the complaint are identical. The involvement of the applicant as also the Bidkars is identical inasmuch as the transaction is one and the same. Hence, by merely observing that there are allegations of forgery and investigations are in progress, the applicant could not have been denied pre-arrest bail.

7. He submits that the applicant is also arrayed as an accused in CR No.579 of 2005 but he is released on bail therein. It is false to suggest that the applicant has not been co-operating in the investigation inasmuch as from February 2006 he has been regularly attending the office of

I.O.. In any event, he is ready and willing to abide by such conditions which would ensure smooth progress of the investigation.

8. Shri Mirza could not dispute the fact of release of accused nos.4 to 10 on pre-arrest bail. So also he could not dispute the fact of pendency of the civil suit. However, in his submission, when the investigations are in progress and the charge is serious namely forgery and tampering with the public record and documents, this Court should not take a lenient view of the matter but proceed to dismiss the application upholding the prima facie conclusions of the learned Sessions Judge.

9. With their assistance I have perused the entire application and the annexures. Since the basic fact of filing of civil suit by the complainant and allegations in the plaint and the complaint with regard to the ownership as also the applicant being identical, it would not be fair to deprive the applicant the facility of pre-arrest bail. More so, when he is also released on bail in the other CR and nothing has been pointed out to me to take a different view or that the applicant is not co-operating. There

is no reply affidavit.

10. In such circumstances, the applicant is entitled to pre-arrest bail. The following order would subserve the ends of justice.

11. ORDER :-

(i) In the event of the arrest of the applicant in connection with C.R.No.17 of 2006 registered with Deccan Police Station, the applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.25,000/- (Rs.Twenty five thousand only) with one or two local sureties in the like sum;

(ii) The bail is granted subject to condition that the applicant will attend the concerned Police Station from 21st August 2006 to 26th August 2006 between 10.00 a.m. to 02.00 p.m. and thereafter as and when summoned.

(iii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The applicant shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in the above terms.

(S.C.DHARMADHIKARI, J.)